

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JASON N. WITMER,)	
)	
Petitioner,)	4:03cv3315
)	
vs.)	MEMORANDUM AND ORDER
)	
ROBERT HOUSTON,)	
)	
Respondent.)	

In filing no. 59, a letter dated February 12, 2006, the petitioner inquires about the status of his third habeas corpus claim, the respondent's affirmative defense of procedural default as to that claim, and the petitioner's showing of cause and prejudice to excuse the alleged procedural default. I construe the petitioner's letter as a Motion for Status, and I grant the Motion.

In my Memorandum and Order of February 15, 2006 (filing no. 58), I noted the changes in the law which have occurred since the petitioner first filed his Petition for Writ of Habeas Corpus in this case. I concluded that, as a result, I will accept filing no. 39, the petitioner's Third Amended Petition, as the operative habeas corpus petition in this case. That petition includes five habeas claims, including the petitioner's third habeas corpus claim.

In filing no. 58, I also stated that I would require the respondent to address the petitioner's third claim on the merits, and I will reserve final ruling on the affirmative defense of procedural default until I have considered the Third Amended Complaint, the entire state court record, the parties' briefs, all five habeas claims on the merits and all affirmative defenses. In filing no. 58, I also established a briefing schedule to bring this case to a prompt conclusion.

In accordance with filing no. 58, the respondent has now filed an Answer (filing no. 61) and a Designation of Relevant State Court Records (filing no. 60). The petitioner's initial brief is due by March 30, 2006.

THEREFORE, IT IS ORDERED:

1. That filing no. 59, the petitioner's letter dated February 12, 2006, is construed as a Motion for Status and is granted; and

2. That the Clerk of Court shall send the petitioner a copy of filing no. 58 and a copy of the docket sheet for this case together with the petitioner's copy of this Memorandum and Order.

March 9, 2006.

BY THE COURT:

/s Richard G. Kopf
United States District Judge